

Construction and Engineering

Construction & Engineering Newsletter – June 2014

In between Bank Holidays, May was a very busy month for the team considering issues such as:

- How to proceed on behalf of a contractor in dispute with its client when the ‘real problem’ is the architect’s apparent failure, properly to administer the contract
- The difference between rescission and ‘normal’ termination (see this month’s “Cutting through the Legalese” for the answer!)
- Trying to identify who is responsible for certain aspects of the design of certain works
- Whether a defect (or more accurately, the losses caused by a defect) being covered by a 3rd party’s insurance can be a bar to claiming against the person who caused the defect
- What you do when a Litigant in Person (see Jon’s comments last month) decides they will give evidence of fact at Trial, but fails to file and serve a witness statement.
- We have also made and received more without prejudice offers than you could shake a stick at!

So.... onto business....

Cutting through the legalese: “Rescission”

By Anna Wood

Rescission. Sounds painful? It is! Rescission is an equitable remedy for termination (meaning it doesn’t need to appear in the contract or in statute, but it may still be available). It is reserved for cases where the defaulting party has really “done wrong” (for example, lied to the other party to induce them into entering the contract). There is a high standard to be met in order to persuade the Court to award an equitable remedy, and rightly so because the consequences are far more onerous than “normal” breach of contract damages. To explain, it is easier to compare:

Termination leading to “normal” damages

The “defaulting” party has to put the “innocent” party in the position it would have been in had the “defaulting” party performed the contract properly. As a very basic example, the employer pays the contractor £2m to carry out the works. The “defaulting” contractor leaves the works in a defective state. It costs the “innocent” employer £100k to correct these defects. The “defaulting” party should pay the “innocent” party £100k.

Rescission

The “defaulting” party has to put the “innocent” party in the position it would have been in had the contract never been signed. As a very basic example, the employer pays the contractor £2m to carry out the works. The “defaulting” contractor leaves the works in a defective state. The “defaulting” contractor has to (1) pay back the £2m to the employer AND (2) remove ALL the works that it has carried out and (3) leave the land in the same state it was before the contractor started the works.

As you can see, rescission is significantly MORE onerous than usual termination damages.

We have recently seen a rare example of an employer attempting to have a contractual right to rescission. This would effectively get round the high standards required by the Courts to be met, in order to be entitled to such a remedy. This is extremely rare for a building contract and extremely onerous for a contract. Contractors: watch out for such clauses and be very wary of signing a contract containing them!

Premium Rate Telephone Numbers

By Iain Garfield

As one retail giant would have us believe, "every little helps".

And, as a consumer, we will shortly be saving a few pennies on our telephone bills due to new European rules being introduced this month.

Unfortunately, it does mean more bureaucratic red-tape for businesses. Then again, when did new rules mean anything else?

Most businesses, whether they are aware or not, will shortly be subject to the snappily-titled Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013, which change how businesses are required to deal with consumers who place orders online, via telephone or by mail order.

And hidden away, deep within the text of the new Regulations, is section 41 ... which requires businesses to ditch premium rate telephone numbers (ie. most of those beginning 084, 087 or 09) for customer service calls.

Some sectors of industry are exempt, such as banking, insurance, letting agents, door-to-door milkmen and package holidays, but most industries will be caught.

Interestingly, the rules do not apply to all telephone calls. For example, a business can retain a premium rate number for general enquiries, sales enquiries, placing orders and technical support ... it is only calls relating to an existing order that are covered, such as when a consumer is chasing up a delivery time or helplines for returns or complaints.

Fortunately, a service has been set up to allow businesses to simply replace the '08' element of their premium rate number with '03', the rest of the number remaining the same.

Has your company considered switching from premium rate to basic rate numbers yet? Time is running out!

My Perfect Sunday: Andy Metcalfe of Speller Metcalfe

By Anna Wood

By way of background, Andy told us:

“Originating in Bradford, I came to Gloucester in the late 80’s via a spell in the Southwest and then London. The partnership between Speller & Metcalfe came into being in ‘95/96 after a few years of working together in other businesses. It was a bold step to take at the time, at the end of the last recession to bite the construction industry.

The face of construction has changed immeasurably in the intervening period – along with the working practices within construction. I’m immensely proud of how Speller Metcalfe have grown in stature through the last 19 years, and of the reputation we have gained for a forward think construction group at the forefront of the continuing change within the industry.”

I've worked in/with the construction sector since: 1981

The best thing about my job is: seeing people grow in confidence & ability and moving through promotion within the company

The worst thing about my job is: the ever increasing pace at which life is moving. Where has the thinking time gone? Everything now seems to be expected to warrant an instant reaction!

The first album I ever bought was: definitely Sparks; I think it might have been Kimono My House. My parents didn't approve!

My favourite holiday was to: The Ionian sea, Greece sailing a 36' yacht with the family. It's the holiday we all look back on with very fond memories

My favourite bar/restaurant in Gloucestershire is: Peppers Café in Bull Lane, Gloucester. Serves good honest food - freshly made, great local beers and ciders and has a good selection of live music throughout the year.

Make mine a (e.g., pint of real ale/rum and coke): Butcombe Blonde

In 2014....I look forward to a return to meaningful profitable working

My perfect Sunday would be: riding out with the Gloucester City Cycle Club, with a fair wind on your back out and home, then a brisk walk with Barney our dog in the afternoon followed by a well-earned snooze after a home cooked dinner. Perfect!

These notes have been prepared for the purpose of an article only. They should not be regarded as a substitute for taking legal advice.

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